Supreme Court, U.S.
FILED

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No.

In the

Supreme Court of the United States

Bill J. Cory,
Petitioner

v.

Doris Fahlstrom,
Thomas M. Tuggle, Judge
Guy R. Steier,
Patrik W. Neustrom,
Samantha P. Angell, and
Dana Brewer,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the proper standard to invoke the *Rooker-Feldman* Doctrine to bar the Petitioners civil rights claims under 42 U.C.A. §1983 when the cause of action was a lack of jurisdiction of the state court in violation of the Due Process Clause of the Fourteenth Amendment.

2. Whether the question of personal and subject matter jurisdiction of the state court must be determined before the *Rooker-Feldman* Doctrine can be invoked.

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OPINIONS BELOW

Appendix A is found in the Court record. Appendices B and C are attached to this document.

The 12 November 2003 unreported opinion of the Court of Appeals for the Tenth Circuit whose judgment is herein sought to be reviewed is reprinted in attached Appendix B, B-1. The Memorandum Order of the United States District Court for the District of Kansas entered 3 April 2003 is reprinted in Appendix B-4. The prior Memorandum and Order of the United States District Court for the District of Kansas entered 12 February 2003 is reprinted in Appendix B-9.

JURISDICTION

The Order and Judgment of the Court of Appeals for the Tenth Circuit was entered 12 November 2003. This Petition is timely under 28 U.S.C. § 2101 (c). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. § 1983; K.S.A. 60-302, 60-303 (b) and (c), 60-304(a), 60-308 (a), (b) and (e), and 60-312 (a) and (b) are reprinted in relevant part in Appendix C.

STATEMENT OF CASE

Personal jurisdiction was found in the United States District Court for the District of Kansas under 28 U.S.C. § 1391 because the claim arose, and each Respondent is found, resides, and transacts business in the State of Kansas.

Jurisdiction over the subject matter was found pursuant to 28 U.S.C. § 1331, 1332, and 1343; and under the doctrine of pendant jurisdiction. The Petitioner is a resident of Flagler County, Florida.

The claim arose in this Honorable Court when the District Court of Kansas invoked the *Rooker-Feldman* Doctrine to grant Summary Judgment to the Respondents, effectively dismissing the Petitioners civil rights claim under 42 U.S.C. § 1983. The Petitioner had filed suit for damages against the Respondents citing the lack of personal and subject matter jurisdiction of the state court, among other allegations. The case was never decided on the merits and the court of Appeals for the Tenth Circuit merely affirmed the decision of the lower court.

The Petitioner was never served process pursuant to the Statutes of the State of Kansas for the service of process when the suit was filed against him in state court. **Therefore he was never summoned into the court, and he stayed home for the next ten (10) months, never making a general appearance in the court.** During this time the state court issued a Default Judgment, an attachment order directing the sheriff to seize and sell his farm at public auction, and a show cause order for contempt of court. At the time the state court was taking the forgoing actions against him, the Petitioner practiced due diligence in the law by making special appearances in the Court of Appeals for Kansas and the Supreme Court of Kansas, all to no avail.

Approximately three (3) weeks prior to the land being sold by the sheriff, the Petitioner retained counsel to delay the sale of the land until his Appeal was decided by the Court of Appeals of Kansas. The attorney stated that the only way to stop the sale of the land was to pay money. An arrangement was made with the Respondents whereby four hundred thousand dollars ($400,000.00) would be paid into the court.

The petitioner's attorney told him that he would have to be in court to pay the money, and be present because of the Show Cause Order for Contempt of Court. Three (3) days before the land was to be sold, the Petitioner made a special appearance in the state court and the four hundred thousand dollars ($400,000.00) was paid. At that time, and without having been informed, he was required to sign several legal papers and give testimony. The sole purpose for paying four-hundred thousand dollars ($400,000.00) and the signing of papers was to avert the sale of the farmland and contempt of court proceedings.

The Petitioner has repeatedly requested that the Respondents furnish proof of service of process in his filings in special appearances in the appellate courts of Kansas, in his complaint in the District Court of Kansas and Opening Brief in the Tenth Circuit, and again in this writ. No proof of service in any court has ever been proffered. Respondents only reply has been that the Petitioner voluntarily and freely paid four-hundred thousand dollars ($400,000.00), and told the judge in testimony that is what he wanted to do. The unlawful use of the state attachment statutes to sell the Petitioners land and the contempt of court action caused the Petitioner to capitulate, and do what he felt he must do to survive. Judge Tuggle was part of the conspiracy, and the foregoing evidences coercion and intimidation on his part.

The state court judge issued an order rescinding the default judgment, settling the issue, and, in effect, attempted to make all their unlawful acts appear legal. The Petitioner does not have a state court judgment against him, and he was never a party to a suit in state court. He filed a cause of action for damages in the District of Kansas, stating that his civil rights had been violated under 42 U.S.C.§ 1983 and that the state court abrogated his right to due process under the Fourteenth Amendment of the Constitution.

The District Court of Kansas never applied the Rooker-Feldman Doctrine on the merits to the case, but rather made an arbitrary decision that the Rooker-Feldman Doctrine applied since it was a § 1983 claim involving a state court action. In order for the *Rooker-Feldman* Doctrine to apply, the court must rule that he was served process and that the state court had personal and subject matter jurisdiction. The lack of jurisdiction of the state court is his case-in-chief, and must be decided on the merits.

REASONS FOR GRANTING THE WRIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Bill J. Cory, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the Order and Judgment of the United States Court of Appeals for the Tenth Circuit entered in this matter on 12 November 2003.

All courts, state and federal, rigorously adhere to the Rule of Law that they must have both personal and subject matter jurisdiction before commencing a judicial proceeding. After the Petitioners Notice of Appeal, the Tenth Circuit held the appeal in abeyance for a lack of jurisdiction and issued a show cause order. The Kansas District Court Judge requested that one Respondent, who has failed to respond to the Petitioners Motion for Summary Judgment, submit a Motion for Summary Judgment and the Petitioner to respond. The case had been closed on 11 February 2003, but the District Judge entered a second order granting Summary Judgment to the defaulting Respondent on 3 April 2003 (B-4). This Summary Judgment, based upon this untimely response of the Respondent, satisfied the Tenth Circuits requirement for jurisdiction, and the appeal was allowed to proceed.

The Petitioners case-in-chief under 42 U.S.C. § 1983 is that the State Court lacked jurisdiction over his person

and the subject matter, and that he was denied procedural due process under the Due Process Clause of the Fourteenth Amendment to the Constitution. Both the Kansas District Court and the Tenth Circuit set aside the state court jurisdictional requirement as if it were irrelevant. Given that all courts conform to these jurisdictional requirements, the Kansas State Court Judge should be held legally responsible for failure to have jurisdiction. The Cloud County District Court Judge Tuggle made his own law, and adjudged that he had personal jurisdiction when it was self-evident from the record before him that the Petitioner had never been served process according to the Statutes of the State of Kansas. The District Court of Kansas and the Tenth Circuit refused to consider the state court lack of jurisdiction with the corresponding denial of procedural due process, and its consequential bar of the *Rooker-Feldman* Doctrine. For this most important reason, and if for no other reason, Certiorari should be granted the Petitioner.

The Petitioner filed his § 1983 claim for the first time in the District Court of Kansas. Due to lack of jurisdiction, he was never a party to a suit in state court and his choice to forgo optional state review failed to convert the state court actions against him into a full and fair opportunity to litigate. The Petitioner had the right to choose to litigate in any court with jurisdiction. He chose the District Court of Kansas and his claims are properly before the federal courts. *Johnson v. DeGrandy*, 512 U.S. 997, 105, 106 (1994). The Petitioner was not a party in state court, he is not challenging a state court decision, and his case is not inextricably intertwined with a state court decision. Rather, the Petitioner filed suit for damages under 42 U.S.C. § 1983 for denial of procedural due process under the Due Process Clause for deprivation of his Constitutional Rights. Therefore the *Rooker-Feldman* Doctrine is inapt and does not apply.

When the Petitioner attempted to retain counsel for this suit, most said they did not know the law, but others would not accept the case because the Petitioner was suing four lawyers and a judge. They simply stated that the sitting judge and the defendants were of the same flock and the judge "would find some way to make you lose". That's exactly what happened. The Tenth Circuit is not applying the *Rooker-Feldman* Doctrine in conformance with the intent of the Doctrine as set forth by this Honorable Court. The Doctrine was instituted to prevent losers in state courts from using the Civil Rights Act to make an end-run around state court decisions. In this case, just the reverse is true. The Tenth Circuit courts are using the *Rooker-Feldman* Doctrine to circumvent trying bonifide civil rights cases.

The Tenth Circuit invoked the Doctrine in a manner contrary to its usage in other circuits, and this Honorable Court should grant certiorari to cause the Tenth Circuit to proceed with civil rights cases and refrain from denying § 1983 claims without just cause. The continued intentional barring of § 1983 claims will deal a severe blow to Civil Rights Act, and this Honorable Court should clarify the purpose and usage of *Rooker-Feldman* to the Tenth Circuit. The citizens with civil rights violations entering court in the Tenth Circuit deserve the same right to be heard as all other citizens.

The District Court of Kansas and the Tenth Circuit had jurisdiction under § 1983 to determine whether or not the state court had satisfied the jurisdictional requirements. All federal courts have jurisdiction under § 1983 to collaterally review state court actions and judicial decisions to protect the people from the unconstitutional deprivation of their rights under the color of state law.

> "Congress enacted § 1983 and its predecessor, § 2 of the Civil Rights Act of 1866, 14 Stat. 27, to provide an independent avenue for protection of

federal constitutional rights. The remedy was considered necessary because "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." *Mitchum v. Foster*, 407 U.S. 225, 240, 92 S.Ct. 2151, 2161, 32 L.Ed. 2d 705 (1972). See also *Pierson v. Ray*, 386 U.S., at 558-564, 87 S.Ct., at 1219-1222 (dissenting opinion) (every Member of congress who spoke to the issue assumed that judges would be liable under § 1983).

Subsequent interpretations of the Civil Rights Acts by this Court acknowledge Congress' intent to reach unconstitutional actions by all state actors including judges. In *Ex parte Virginia*, 100 U.S. 339, 25 L.Ed. 676 (1880) § 4 of the Civil Rights Act of 1875, 18 Stat. 336, was employed to authorize a criminal indictment against a judge for excluding persons from jury service on account of their race. The Court reasoned that the Fourteenth Amendment prohibits a State from denying any person within its jurisdiction the equal protection of the laws. Since a State acts only by its legislative, executive, or judicial authorities, the constitutional provision must be addressed to those authorities, including the State's judges. Section 4 was an exercise of Congress' authority to enforce the provisions of the Fourteenth Amendment

> and, like the Amendment, reached unconstitutional state judicial action.
>
> The interpretation in *Ex parte Virginia* of Congress' intent in enacting the Civil Rights Acts has not lost its force with the passage of time. In *Mitchem v. Forster*, supra, the Court found § 1983 to be an explicit exception to the anti-injunction statute, citing *Ex parte Virginia* for the proposition that the very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.' "407 U.S., at 242, 92 S.Ct., at 2162.
>
> ..."We remain steadfast in our conclusion, nevertheless, that Congress intended § 1983 to be an independent protection for federal rights and find nothing to suggest that congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review."

(Emphasis added) *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565, (1984). The federal courts have original jurisdiction over all § 1983 claims pursuant to 28 U.S.C. § 1343. The federal courts right of original jurisdiction affords the court the authority to re-try state court § 1983 claims. If a party is defeated in a state court § 1983 claim, he can retry the exact same case in federal court. Several citations are available to the Plaintiff in support of the foregoing, however he prefers a writing of Justice O'Connor, "...Glover filed this § 1983 action

against petitioners in Federal District Court. His factual allegations were identical to those made in the state court petition – indeed Glover simply appended copies of papers filed in state court to his federal – court complaint". *Tower v. Glover*, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758, (1984). The Tenth Circuit courts declined to fulfill their duty, and attempted to avoid responsibility for this civil rights action by invoking the *Rooker-Feldman* Doctrine. Certiorari should be granted the Petitioner.

The Petitioners case-in-chief is that he was never served the Summons and Petition, and the Amended Petition pursuant of the Statutes of Kansas for service of process. He never made a general appearance and was never hailed into the Cloud County District Court. Therefore the Cloud County Court failed to have personal jurisdiction over him.

The Respondents have the burden of proof by prima facie evidence that the Petitioner was served process.

Therefore, the Petitioner requests that the Respondents provide this Honorable Court with Proof of Service of Process in the form of a Return of Summons, Acknowledgement of Summons, or Certified Mail Return Receipt from the Cloud County District Court Record (C-5).

DENIAL OF PROCEDURAL DUE PROCESS (42 U.S.C. § 1983)

The Plaintiff filed a Motion to Dismiss for Failure to Serve Process and to Award Sanctions Pursuant to K.S.A. 60-211 in the District Court of Cloud County, Kansas on 20 April 2000 (Doc. 40, Ad. 1). The Plaintiff moved the court to dismiss the petition filed 19 January 2000 (Ad. 2) pursuant to K.S.A. 60212 (b) for: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and

(5) insufficiency of service of process. If a state has statutory method for serving process, that method must be followed. There is no chance to speculate whether some other mode will not answer as well. *Amy v. City of Watertown,* 130 U.S. 301, 316-17, 9 S.Ct. 530, 535-36, 32 L.Ed. 946 (1889). The Respondents had notice that process had not been served, but failed to perfect service of process according to the Statutes of Kansas.

The purported summons (Doc. 40, Ad.1, Exh. 2) the Plaintiff received by first class mail, lacked the signature of the clerk, the court seal, the date, and case number. K.S.A. 20-303 mandates that the clerk of court use the seal of the court to authenticate all process and all official acts. K.S.A. 60-302 states the summons shall be signed by the clerk, under the seal of the court, and dated the day it is issued (C-1). In *Lindsay v. Comm'rs of Kearney Co.,* 56 K. 630, 44 P. 603 the Supreme Court of Kansas stated:

> ..."The summons is the process by which parties defendant are brought into court, and it is important, therefore, that the statutory requirements respecting the same be substantially observed. It is provided that "the summons shall be issued by the clerk,.....shall be under the seal of the court from which the same shall issue, shall be signed by the clerk, and shall be dated the date it is issued".....the statutory requirement that the summons shall be signed by the clerk is imperative, and it cannot be safely disregarded. The signature of the clerk is equally as important to the validity of the summons as is the seal, and with respect to that this court has expressly decided that "if the summons was issued without a seal it would be void, and a judgment founded

> thereon a nullity". (*Dexter v. Cochran*, 17 Kan. 447.)"

All summonses must be authenticated by the seal of the court and the signature of the clerk of court in order to validate the summons. *Dexter v. Cochran*, 17 Kan. 447; *Kelso v Norton*, 74 K. 442, 87 P. 184; *Taylor v. Buck*, 61 K. 694, 60 P. 736. Additionally, Defendants are required to be provided with a true and correct copy of the summons on record in the court. *Dresser v. Wood*, 15 K. 344. The legally defective summons precluded substantial compliance with any of the methods prescribed for the service of a summons in K.S.A. Chap. 60, Art. 3. Most importantly, the Plaintiff was never served process in accordance with any of the Kansas statutes for service of process, K.S.A. 60-303, 304, or 308 (C- 2).

It is not enough to be aware that you are being sued, but the server must be in substantial compliance with one of the statutory methods for serving process. K.S.A. 60-204 states in part:

> "in any method of serving process, substantial compliance therewith shall effect valid service of process if the court finds that, notwithstanding some irregularity or omission, the party served was made aware that an action or proceeding was pending in a specified court in which his or her person, status, or property were subject to being affected."

Without substantial compliance, the clause "the party was made aware that an action or proceeding was pending is not triggered. From *Briscoe v. Getto*, 204 Kan. 254, 462 P.2d 127:

> "There was no method of statutory service that was substantially complied with. The provision for ignoring the irregularities or

> omissions, if the trial court finds that the party was aware that an action or proceeding was pending in a specified court in which his person, status, or property was subject to being affected, was not brought into operation."

Service of process on the Plaintiff shows a postal return receipt marked unclaimed and a certificate of mailing for a first-class letter. In *Bray v. Boyles*, 228 Kan. 481, 618 P. 2d 807; *Haley v. Hershberger*, 207 Kan. 459, 485 P. 2d. 1321; *Briscoe v. Getto*, 204 Kan. 254, 462 P. 2d. 127; *and Dunn v. City of Emporia*, 643 P. 2d 1137, it was clear that all defendants were given actual notice that suit had been filed, but the court found that service of process was defective. In the case under decision, one cannot even pretend that substantial compliance with any statutory method for service of process on the Plaintiff was perfected.

The **right to procedural due process is absolute** and does not depend upon the merits of substantive assertions. *Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed. 2d 258. The Petitioner was denied procedural due process when the state court stated that it had personal jurisdiction over the Plaintiff, in spite of the fact he had not been served process and haled into court. The plaintiff believed he had the Protection of the Kansas statutes for service of process and the safeguards imposed by the Due Process Clause of the Fourteenth Amendment, and therefore, could not be harmed. If the Defendants had filed an Alias summons and perfected service, the plaintiff would have entered the court and defended. The plaintiffs reliance on his right to procedural due process was in error since Judge Tuggle disregarded the Kansas statutes for service of Process and the Due Process Clause, and the Plaintiff was subsequently injured. The direct cause of the Plaintiffs injury was a denial of

procedural due process. Failure of the federal court system to determine the merits of his case simply diminishes the value of the courts. In the turmoil of the world today, this great society known as the democracy of the United States needs a court system that stands as a bulwark for every citizens rights. The United States Supreme Court is the court of last resort, and this Court alone has the final responsibility to enforce the Law of the Land for the protection of the people.

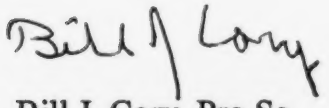
The Petitioner addressed the Pattern of Racketeering Activity in Supreme Court No. 87-1854, which, by copying, became the winning argument in *H.J. Inc. et al. v. Northwestern Bell Telephone Co. et al.* Supreme Court No. 87-1252. He refiled in the same District Court of Maryland and brought his case to a successful conclusion. In the present case, there is no decision on the merits. Such a refiling is a waste of judicial resources, and the Petitioners time and money. Hopefully the foregoing will be unnecessary, and the Petitioner prays this Honorable Court will cause the Tenth Circuit to decide the present case on its merits.

There is no parole evidence, the case is entirely legal in nature, and may be decided upon the Brief without oral argument. The state court lack of subject matter jurisdiction will be presented in the Brief.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,



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9 January 2004